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10 American Federation of State, County & Municipal Employees Local 101

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF SANTA CLARA**

13 **AT SAN JOSÉ**

14 SAN JOSE POLICE OFFICERS'
15 ASSOCIATION,

16 Plaintiff,

17 v.

18 CITY OF SAN JOSÉ, BOARD OF
19 ADMINISTRATION FOR POLICE AND FIRE
20 DEPARTMENT RETIREMENT PLAN OF
21 CITY OF SAN JOSE, and DOES 1-10,
22 inclusive,

23 Defendants.

24 AND RELATED CROSS-COMPLAINT AND
25 CONSOLIDATED ACTIONS

Consolidated Case No. 1-12-CV-225926

[Consolidated with Case Nos. 1-12-CV-225928,
1-12-CV-226570, 1-12-CV-226574,
1-12-CV-227864, and 1-12-CV-233660]

Assigned For All Purposes To:
Judge Patricia Lucas
Department 2

**[PROPOSED] ORDER ON AFSCME
LOCAL 101'S OBJECTIONS TO
EVIDENCE SUBMITTED BY DEFENDANT
CITY OF SAN JOSÉ IN SUPPORT OF
OPPOSITION TO SUPPLEMENTAL
MOTION FOR ATTORNEYS' FEES**

Hearing Date: December 16, 2014
Hearing Time: 9:00 a.m.
Courtroom: 2
Judge: Honorable Patricia Lucas
Action Filed: June 6, 2012
Trial Date: July 22, 2013

26 Plaintiff AFSCME Local 101 ("AFSCME") submitted objections to the declaration and
27 exhibits submitted by Defendant City of San José ("City") in support of its opposition to AFSCME's
28 supplemental motion for attorneys' fees. Defendant submitted the Declaration of Linda M. Ross and
certain exhibits in support of its opposition. Plaintiff AFSCME Local 101's specific objections and
the Court's ruling on each objection are set forth below.

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OBJECTION NO. 1

Declaration of Linda M. Ross

Material Objected to:	Grounds for Objection:	COURT'S RULING ON OBJECTION:
<p>1. Exhibit B to Ross Declaration, page 1, paragraph 3 (objection is particularly with respect to Exh. B):</p> <p>Exhibit B: City's rendition of select entries from AFSCME's billing records</p> <p>(Paragraph 3 says: "We conducted a line by line review of the billing records submitted by Plaintiffs. In reviewing the billing records, we attempted to segregate (1) fees representing unreasonable amounts of time spent in litigating the case, including fees billed for excessive work, duplicative work, and unnecessary travel, (2) fees that were not properly supported, including vague or block billed entries, and (3) fees attributable to claims for relief on which Plaintiffs' were not successful. For each Plaintiff, we separately calculated the total fees for such work. We have organized the categories for each Plaintiff on Excel spreadsheets attached as Exhibits A, B, and C to this declaration.")</p>	<p>Hearsay (Evid. C. § 1200; <i>see also Aguimatang v. California State Lottery</i> (1991) 234 Cal.App.3d 769, 799); Secondary Evidence (Evid. C. § 1521)</p> <p>Exhibit B constitutes the City's inaccurate, incomplete rendition of AFSCME's billing records. Not only does the exhibit diverge from the chronological format of AFSCME's billing records, but it is also riddled with errors in its transcription of AFSCME's bills; it also mis-categorizes certain entries, as further discussed in the Soroushian Declaration (¶¶ 3-5) and Paterson Supplemental Declaration (¶¶ 7-13) submitted in support of AFSCME's reply in support of its supplemental motion for attorneys' fees. Said declarations are incorporated into these objections as if fully set forth herein.</p> <p>Exhibit B--which contains inaccuracies, cherry-picks limited billing entries, eliminates the chronological ordering of AFSCME's billing records and creates artificial and often incorrect categories--is offered for the truth of its contents, and so it must be excluded as impermissible hearsay. The City's addition of "subject matter" labels to the table also constitutes hearsay. Finally, AFSCME's billing records are the best evidence of its work on this case.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

OBJECTION NO. 2

Material Objected to:	Grounds for Objection:	COURT'S RULING ON OBJECTION:
<p>2. Ross Declaration, page 6, paragraph 27:</p> <p>"AFSCME seeks a fee award of \$513,411.25 based on a blended rate of \$275 per hour for partners and associates. AFSCME states that the fee award already has been reduced by 15% for pstate court work and 30% for federal court work. However, unlike the SJPOA submission, the AFSCME submission does not show how the 15% state court work and 30% federal court work reduction was taken. The time records simply show total fees of \$510,111.25, to which AFSCME adds an estimated additional \$3,300 in fees for the remaining work on AFSCME's attorneys fee motion. For this reason, the City will begin its analysis with the \$513,411 number, since there is no proof of any reduction."</p>	<p>Improper Opinion Testimony (Evid. C. § 800-803), Lacks Foundation (Evid. C. §§ 402, 403, 702(a)); Secondary Evidence (Evid. C. § 1521)</p> <p>AFSCME submitted Mr. Paterson's sworn declaration, attesting to the reductions to the hours it worked. This (along with the actual billing records submitted) is the best evidence of the reductions and suffices as proof of such (<i>see Weber v. Langholz</i> (1995) 39 Cal.App.4th 1578, 1587).</p> <p>Resultantly, Ms. Ross' statement that there is no proof of this reduction lacks any sort of foundation is nothing more than an opinion that ignores the facts set forth in Mr. Paterson's declaration.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

OBJECTION NO. 3

Material Objected to:	Grounds for Objection:	COURT'S RULING ON OBJECTION:
<p>3. Exhibit L to Ross Declaration, pages 6-7, paragraph 29:</p> <p>Exhibit L: Order Denying Motion for Attorneys' Fees in Federal Case</p>	<p>Irrelevant, Undue Prejudice (Evid. C. §§ 350-352)</p> <p>Exhibit L is completely irrelevant. Not only was it an order on a motion to which AFSCME was not a moving party (which the City recognizes), but the City provides no authority as to how or why this fact has any bearing on AFSCME's entitlement to fees on the work it performed with respect to the federal case. In fact, as the City recognizes, the SJPOA does not seek an award of attorneys' fees for the work it performed on the federal case here</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

OBJECTION NO. 4

Material Objected to:	Grounds for Objection:	COURT'S RULING ON OBJECTION:
<p>4. Ross Declaration, pages 6-7, paragraph 29:</p> <p>"Federal case. AFSCME is seeking 99.2 hours of work in connection with the Complaint for Declaratory Relief filed by the City in the United States District Court for the Northern District of California. (See Declaration of Teague Paterson, dated October 16, 2014, page 5) The City filed the federal Complaint in June 2012 and dismissed it without prejudice on October 1, 2012 to conserve resources by avoiding simultaneous federal and state court actions. Subsequently, the City filed its federal claims as a Cross Complaint in this action based on the stipulation of all parties. AFSCME did not file for attorney's fees in the federal action. The SJPOA filed for attorney's fees in the federal action but its motion was denied. Notably, the SJPOA, unlike AFSCME, is not seeking any fees in this case for its work in the federal action. Attached as Exhibits K and L, respectively, are true and correct copies of the City's dismissal without prejudiced, dated October 1, 2012 and the order of the federal district court, dated September 9, 2013 denying the SJPOA fee motion. None of the time spent in the federal litigation should be allowed for a total subtraction of 99.2 hours."</p>	<p>Insufficient Proof to Justify Requested Reduction (<i>Premier Med. Mngmt. Systems, Inc. v. Cal.</i> (2008) 163 Cal.App.4th 550, 564)</p> <p>The City has neither attacked the itemized billings it places in this category with admissible evidence that the fees claimed were not appropriate nor has it obtained the declaration of an attorney with expertise in the procedural and substantive law to demonstrate that the fees claimed were unreasonable. Through her declaration, Ms. Ross does not claim that she is either.</p>	<p>Sustained: _____</p> <p>Overruled: _____</p>

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OBJECTION NO. 5

Material Objected to:	Grounds for Objection:	COURT'S RULING ON OBJECTION:
5. Exhibit X to Ross Declaration, page 15, paragraph 72: Exhibit X: declarations submitted by SJPOA in support of Motion for Temporary Restraining Order	Irrelevant, Undue Prejudice (Evid. C. §§ 350-352); Lacks Foundation (Evid. C. §§ 402, 403, 702(a)) AFSCME was not a party to this particular motion and any representations made by non-AFSCME members are not relevant to AFSCME or its members. Any purported financial effect on non-AFSCME members is irrelevant to AFSCME. This evidence is particularly irrelevant because, again, the litigation did not lead to a tangible monetary award for AFSCME or its members, and the City uses it to argue that AFSCME had a significant financial stake in the litigation.	Sustained: _____ Overruled: _____

OBJECTION NO. 6

Material Objected to:	Grounds for Objection:	COURT'S RULING ON OBJECTION:
6. Exhibit Y to Ross Declaration, page 15, paragraph 73: Exhibit Y: copy of trial transcript re SJPOA opening statement	Irrelevant, Undue Prejudice (Evid. C. §§ 350-352) Any purported financial effect on non-AFSCME members is irrelevant to AFSCME. Furthermore, words spoken during an opening argument do not constitute evidence and are irrelevant. This exhibit is particularly irrelevant because, again, the litigation did not lead to a tangible monetary award for AFSCME or its members, and the City uses it to argue that AFSCME had a significant financial stake in the litigation.	Sustained: _____ Overruled: _____

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OBJECTION NO. 7

Material Objected to:	Grounds for Objection:	COURT'S RULING ON OBJECTION:
7. Exhibit S to Ross Declaration, page 14, paragraph 67: Exhibit S: pages from SJ Police and Fire Dept. Retirement System OPEB Actuarial Valuation, dated June 30, 2012	Irrelevant, Undue Prejudice (Evid. C. §§ 350-352); Lacks Foundation (Evid. C. §§ 402, 403, 702(a)) This document has nothing to do with AFSCME and is irrelevant to it. It is further irrelevant because it is dated after Measure B passed. This exhibit is particularly irrelevant because, again, the litigation did not lead to a tangible monetary award for AFSCME or its members, and the City uses it to argue that AFSCME had a significant financial stake in the litigation. Ms. Ross neither represents the retirement board nor Cheiron and lacks the capacity to authenticate it.	Sustained: _____ Overruled: _____

OBJECTION NO. 8

Material Objected to:	Grounds for Objection:	COURT'S RULING ON OBJECTION:
8. Exhibit T to Ross Declaration, page 14, paragraph 68: Exhibit T: pages from SJ Federated System Retirement System OPEB Actuarial Valuation, dated June 30, 2012	Irrelevant, Undue Prejudice (Evid. C. §§ 350-352); Lacks Foundation (Evid. C. §§ 402, 403, 702(a)) This document is irrelevant because it is dated after Measure B passed. It is particularly irrelevant because, again, the litigation did not lead to a tangible monetary award for AFSCME or its members, and the City uses it to argue that AFSCME had a significant financial stake in the litigation. Ms. Ross neither represents the retirement board nor Cheiron and lacks the capacity to authenticate it.	Sustained: _____ Overruled: _____

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OBJECTION NO. 9

Material Objected to:	Grounds for Objection:	COURT'S RULING ON OBJECTION:
9. Exhibit U to Ross Declaration, page 14, paragraph 69: Exhibit U: pages from SJ Police and Fire Dept. Retirement System CAFR for period ended June 30, 2013, dated June 30, 2012	Irrelevant, Undue Prejudice (Evid. C. §§ 350-352); Lacks Foundation (Evid. C. §§ 402, 403, 702(a)) This document has nothing to do with AFSCME and is irrelevant to it. It is further irrelevant because it is dated after Measure B passed. This exhibit is particularly irrelevant because, again, the litigation did not lead to a tangible monetary award for AFSCME or its members, and the City uses it to argue that AFSCME had a significant financial stake in the litigation. Ms. Ross neither represents the retirement board nor Cheiron and lacks the capacity to authenticate it.	Sustained: _____ Overruled: _____

OBJECTION NO. 10

Material Objected to:	Grounds for Objection:	COURT'S RULING ON OBJECTION:
10. Exhibit V to Ross Declaration, page 14, paragraph 70: Exhibit V: pages from SJ Federated Retirement System CAFR for period ended June 30, 2013, dated June 30, 2012	Irrelevant, Undue Prejudice (Evid. C. §§ 350-352); Lacks Foundation (Evid. C. §§ 402, 403, 702(a)) This document is irrelevant because it is dated after Measure B passed. It is particularly irrelevant because, again, the litigation did not lead to a tangible monetary award for AFSCME or its members, and the City uses it to argue that AFSCME had a significant financial stake in the litigation. Ms. Ross neither represents the retirement board nor Cheiron and lacks the capacity to authenticate it	Sustained: _____ Overruled: _____

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OBJECTION NO. 11

Material Objected to:	Grounds for Objection:	COURT'S RULING ON OBJECTION:
11. Exhibit Q to Ross Declaration, page 14, paragraph 65: Exhibit Q: pages from SJ Police and Fire Dept. System Actuarial Valuation, June 30, 2012 (dated Dec. 2012)	Irrelevant, Undue Prejudice (Evid. C. §§ 350-352); Lacks Foundation (Evid. C. §§ 402, 403, 702(a)) This document has nothing to do with AFSCME and is irrelevant to it. It is further irrelevant because it is dated after Measure B passed. This exhibit is particularly irrelevant because, again, the litigation did not lead to a tangible monetary award for AFSCME or its members, and the City uses it to argue that AFSCME had a significant financial stake in the litigation. Ms. Ross neither represents the retirement board nor Cheiron and lacks the capacity to authenticate it.	Sustained: _____ Overruled: _____

OBJECTION NO. 12

Material Objected to:	Grounds for Objection:	COURT'S RULING ON OBJECTION:
12. Exhibit R to Ross Declaration, page 14, paragraph 65: Exhibit Q: pages from SJ Federated System Actuarial Valuation, June 30, 2012 (dated Dec. 2012)	Irrelevant, Undue Prejudice (Evid. C. §§ 350-352); Lacks Foundation (Evid. C. §§ 402, 403, 702(a)) This document is irrelevant because it is dated after Measure B passed. It is particularly irrelevant because, again, the litigation did not lead to a tangible monetary award for AFSCME or its members, and the City uses it to argue that AFSCME had a significant financial stake in the litigation. Ms. Ross neither represents the retirement board nor Cheiron and lacks the capacity to authenticate it	Sustained: _____ Overruled: _____

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PROOF OF SERVICE

SANTA CLARA COUNTY SUPERIOR COURT

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California, 94607-4051. On this day, I served the foregoing Document(s):

**[PROPOSED] ORDER ON AFSCME LOCAL 101'S OBJECTIONS TO EVIDENCE
SUBMITTED BY DEFENDANT CITY OF SAN JOSE IN SUPPORT OF OPPOSITION TO
SUPPLEMENTAL MOTION TO ATTORNEYS' FEES**

☒ **By Mail** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

☒ **By Electronic Service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SEE SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, December 4, 2014.



Esther Aviva

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13 AND

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15 *DAPP, JAMES ATKINS, WILLIAM*
16 *BUFFINGTON AND KIRK PENNINGTON (Santa*
17 *Clara Superior Court Case No. 112-CV-226574)*

18 AND

19 *Plaintiffs/Petitioners, TERESA HARRIS, JON*
20 *REGER, MOSES SERRANO (Santa Clara*
21 *Superior Court Case No. 112-CV-226570)*

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AND

Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE 1961 SAN JOSE
POLICE AND FIRE DEPARTMENT
RETIREMENT PLAN (Santa Clara Superior
Court Case No. 112CV225928)

AND

Necessary Party in Interest, THE BOARD OF
ADMINISTRATION FOR THE 1975
FEDERATED CITY EMPLOYEES'
RETIREMENT PLAN (Santa Clara Superior
Court Case Nos. 112CV226570 and
112CV22574)

AND

Necessary Party in Interest, THE BOARD OF
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